



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 5, 1996

Ms. Luana Buckner
General Manager
Medina County Underground
Water Conservation District
1613 Avenue K, Suite 105
Hondo, Texas 78861

OR96-1597

Dear Ms. Buckner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100908.

The Medina County Underground Water Conservation District (the "district") received a request for ten categories of documents concerning the pumping of water from the Edward's Aquifer within the district's jurisdiction. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have submitted samples of the documents requested.¹ We have considered the exception you claimed and have reviewed the sample documents.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990)

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

at 4. The district must meet both prongs of this test for information to be excepted under section 552.103(a).

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it--unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982). This office has concluded that litigation is reasonably anticipated when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, and when a requestor hires an attorney who threatens to sue a governmental entity. Open Records Decision Nos. 555 (1990), 551 (1990).

Here, the district says that, "[a]lthough a final determination to do so has not been made, the District is considering filing a plea in intervention in the lawsuit." We believe that this statement, without a showing of some concrete step toward litigation, is insufficient to establish reasonable anticipation of litigation. Therefore, we conclude that the district may not withhold the requested information under section 552.103(a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 100908

Enclosures: Submitted documents

cc: Mr. Stuart N. Henry
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(w/o enclosures)